

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CALEB WHITFIELD,	:	Case No. 3:23-cv-23
	:	
Plaintiff,	:	District Judge Thomas M. Rose
	:	
vs.	:	Magistrate Judge Karen L. Litkovitz
	:	
CORRECTION OFFICER GUSTAVE, <i>et</i>	:	
<i>al.</i> ,	:	
	:	
Defendants.	:	

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATION (DOC. NO. 11)

The Court has conducted a *de novo* review of the Report and Recommendation of United States Magistrate Judge Karen L. Litkovitz (Doc. No. 11), to whom this case was originally referred pursuant to 28 U.S.C. § 636(b). Noting that no objections have been filed and that the time for filing such objections, if any, under Fed. R. Civ. P. 72(b) has expired, this Court hereby **ACCEPTS** the recommended disposition and **ADOPTS** the Report and Recommendation.

As stated in the Report and Recommendation, Plaintiff's twenty-seven-page complaint consists of seven groups of claims, which are set forth in 164 separately numbered paragraphs against nineteen defendants. For the sake of clarity, the Court will refer to Plaintiff's groups of claims as counts. In accordance with the Report and Recommendation, it is **ORDERED** that:

1. Plaintiff may proceed at this juncture with Count One's Fourteenth Amendment excessive-use-of-force claim as well as Count One's First and Fourteenth Amendment claims relating to the discontinuation of Plaintiff's December 21, 2021 video visit against Defendant Corrections Officer Gustave for damages in his individual capacity; Count One's Fourteenth Amendment failure-to-intervene claim against Defendant Corrections Officer Molton for damages in his individual capacity; and Count Two's Fourteenth Amendment due process and conditions-of-confinement claims

against Defendants Sergeant Bemis and Sergeant Eaton for damages in their individual capacities;

2. The remaining claims in Counts One and Two, as well as the claims in Count Seven, are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted, with the exception of Plaintiff's claims for injunctive relief, which are **DISMISSED WITHOUT PREJUDICE AS MOOT**, pursuant to 28 U.S.C. 1915(e)(2)(B) and 1915A(b);
3. Plaintiff's claims in Counts Three, Four, Five, and Six are **SEVERED and DISMISSED WITHOUT PREJUDICE**, pursuant to Fed. R. Civ. P. 20(a)(2) and 21;
4. The Court certifies, pursuant to 28 U.S.C. 1915(e)(2)(B) that, for the reasons set forth in the Report and Recommendation (Doc. No. 11), an appeal of this Order would not be taken in good faith and, therefore, denies Plaintiff leave to appeal *in forma pauperis*; and
5. This case shall **PROCEED** in accordance with this Order.

DONE and **ORDERED** in Dayton, Ohio, this Tuesday, July 11, 2023.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE